

S.C. DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

PENALTY CALCULATION GUIDE FOR REPEAT VIOLATIONS
Penalty Calculation Methodology

INTRODUCTION

The “Uniform Enforcement Policy for the Office of Environmental Quality Control,” (U.E.P.), adopted in December 1991, provides uniform procedures for the conduct of enforcement actions and to provide uniform criteria for the assessment of civil penalties. Within this policy is the civil penalty guideline for the assessment of civil penalties that are provided by law for the violation of any statute, regulation, standard, permit, or order.

The following guidelines are being provided for those instances where the Department has determined that the violations are considered repeat violations. “Repeat violations,” for the purposes of this guidance document, are those violations that are similar or are related to violations that were addressed in a previous enforcement action involving the same party at the same facility or site.

Any one or combination of the following factors shall be considered in the assessment of civil penalties: 1) degree of harm or potential for harm to the public’s health, safety or the environment, 2) extent of deviation from the requirements of the statute, regulation, standard or permit, 3) duration of the cited violation(s) and frequency of similar violations, 4) economic benefit as a result of noncompliance, 5) cost of restoration of the environment or abatement of the environmental harm, 6) past performance records or past history of violations, 7) degree of willfulness or negligence, and 8) other pertinent factors that measure the seriousness or frequency of the violation, or the conduct of the party.

GUIDELINES

STEP 1 Determine the total number of alleged violations incurred and the period of time during which they occurred. Confirm all the pertinent facts.

STEP 2 Calculate the **statutory maximum** penalty amount.

Statutory Maximum Penalty = No. of violations x Days of violation x (statutory maximum penalties per violation per day of violation as set forth in the applicable Act).

[NOTE: This amount is calculated only to determine the potential maximum penalty liability. The total civil penalty settlement amount cannot, by law, exceed this amount.]

STEP 3 Calculate the violation “**gravity component**” using the program-specific penalty determination methodology, i.e., established procedures using penalty matrices, case peer review, etc.

- STEP 4 Multiply the gravity component by .5 to 1.0 (50%-100%) to derive a **“violation recurrence component”** for a repeat violation within a three (3) year period.
- Third or subsequent repeat violation(s): Multiply the gravity component by 1.0 to 3.0 (100%-300%) for a third or subsequent repeat violation within a five (5) year period.
- STEP 5 Multiply the gravity component by zero to 1.5 (0%-150%) to derive a **“recalcitrance component.”**
- [NOTE: The penalty may be adjusted upward to address the documented demonstration of uncooperativeness, i.e., unjustified delays in preventing, correcting, or mitigating violations, violations of previous orders, failure to provide timely or complete information, etc.]
- [SECOND NOTE: If this component was considered as part of the process used to calculate the gravity component, enter zero.]
- STEP 6 Determine appropriate **“adjustments”** to the civil penalty, i.e., 1) economic benefit, 2) other pertinent, mitigating factors associated with the recurrence of the violation(s), 3) voluntary disclosure of the violation, pursuant to the S.C. Environmental Audit and Voluntary Disclosure Act, or 4) program-specific adjustment amounts.
- [NOTE: Economic benefit may have been an issue as part of the original enforcement action, e.g., capital expenditures made to install pollution control equipment. Accordingly, economic benefit derived from repeat violations may be the result of failing to properly operate or maintain the equipment, e.g., failing to purchase the chemicals necessary for adequate treatment, failure to run or repair the equipment as necessary to comply, or expenditure avoidance generally.
- This calculation can only be made using either actual costs or reasonable capital and operational cost estimates for installing and operating pollution control equipment that would have allowed the responsible party to be in compliance. In calculating economic benefit, enforcement staff may utilize the EPA computer model as appropriate. If this information is not available at the time of the enforcement conference, then the penalty may be adjusted at a later date to include this penalty component.]
- STEP 7 Those entities which have been evaluated as having repeat violations should also be considered on a multimedia basis and/or on a corporate-wide basis. Those situations of noncompliance that are determined to be multimedia and/or corporate-wide, including those violations that have caused environmental harm or are a threat to the public’s health, should be referred to the Deputy Commissioner for EQC by the Bureau Chief. The Deputy Commissioner may conduct a conference with appropriate representatives of the entity. If the Deputy Commissioner, in consultation with the Commissioner, determines that sanctions other than further orders are required, Department staff will initiate the appropriate actions, to include but not be limited to, preparation of an order to revoke some or all permits held by the entity, preparation of an order requiring cessation of operations, or initiation of a court action seeking specific relief.

SUMMARY

The total civil penalty settlement amount is based upon the following formula:

$$\text{Civil Penalty} = \text{Gravity Component} + \text{Violation Recurrence Component} + \text{Recalcitrance Component} \pm \text{Adjustments.}$$

NOTE: It is recommended that a civil penalty assessment rationale be developed for each enforcement action for which a civil penalty is assessed. This rationale should be retained pending resolution of the enforcement action.

SECOND NOTE: This guide does not apply to programs for which penalty amounts for repeat violations are set forth in either statute or regulation.

Nothing contained herein shall be construed to limit the authority of the Commissioner to take necessary action without following the steps of this Penalty Calculation Guide.